

# FAMILY AND MEDICAL LEAVE ACT POLICY



**Policy Title:** Family and Medical Leave Act

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## POLICY STATEMENT

In accordance with federal law, Grand Forks County provides to eligible employees job-protected leave for specified family and medical reasons; with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave, pursuant to the provisions under the Family and Medical Leave Act of 1993 (the "FMLA") for up to 12 workweeks during a rolling 12-month period for certain family and medical reasons; and up to 26-workweeks of leave during a single 12-month period for military caregiver leave.

This policy sets forth the essential provisions of FMLA. In the event that additional clarification is needed, the actual Act and regulations issued by the federal government implementing the Act shall prevail. Any changes to the Federal Family and Medical Leave Act automatically supersedes the Grand Forks County FMLA Policy.

## RATIONALE

Opportunity for employees to balance their work and family life by taking reasonable protected leave for certain family and medical reasons.

## ELIGIBILITY REQUIREMENTS

Employees must have been employed by Grand Forks County for at least 12 months. The 12 months need not be consecutive in order for the employee to qualify for FMLA leave; separate periods of employment will be counted, provided that the break in service does not exceed seven years. The employee must have worked at least 1250 hours of service during the 12-month period preceding the employee's request for FMLA leave.

## DEFINITIONS

**Continuous Leave:** A single block of time.

**Intermittent Leave:** Leave taken in separate blocks of time due to a single qualifying reason.

**Reduced Leave Schedule:** A leave schedule that reduces the usual number of hours worked per workweek, or hours per workday, of an employee.

**Rolling 12-Month Calendar:** A rolling period measured backward from the date of any FMLA leave usage.

**Active Pay Status:** When an employee is receiving any form of compensation either from hours worked, vacation pay and/or sick pay, personal holidays, etc.

**Inactive Pay Status:** When an employee is no longer receiving any form of compensation either from hours worked, vacation and/or sick pay, personal holidays, etc.

**Employment Benefits:** All benefits provided or made available to employees by Grand Forks County, including group life insurance, health insurance, sick leave, vacation leave, retirement.

**Medical Certification:** Documentation from a healthcare provider certifying that an employee's request for leave to care for their seriously ill spouse, child, parent, or for the employee's own serious health condition is medically supported.

**Healthcare Provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any person determined by the Secretary of Labor to be capable of providing health care services.

**Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves—(A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.

29 U.S.C. § 2611(11).

**Incapacity:** Inability to work, including being unable to perform any one of the essential functions of the employee's position, or inability to attend school, or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.

**Treatment:** Includes but is not limited to examinations to determine if a serious health condition exists and evaluations of the condition.

**Incapacity Plus Treatment:** A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: (A) Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or (B) at least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.

**Pregnancy:** Any period of incapacity due to pregnancy or for prenatal care.

**Chronic Conditions:** Any period of incapacity due to or treatment for chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.

**Permanent or Long-term Conditions:** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.

**Immediate Family Members:** Spouse, parent, son or daughter

**Spouse:** Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

**Parent:** A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

**Son or Daughter:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

**In Loco Parentis:** The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.

**Exigency:** Urgent needs or demands when a family member (spouse, parent, child) is deployed to a foreign county.

**Covered Active Duty of the Regular Armed Forces:** Duty during deployment with the Armed Forces to a foreign county.

**Covered Active Duty of the Reserved components (National Guard and Reserves):** Duty during deployment with the Armed Forces to a foreign county under a call or order to active duty in a contingency operation.

**Covered Servicemember:** A member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in "outpatient status," or is otherwise on the temporarily disabled retired list, for a serious injury or illness.

**Next of Kin:** Nearest blood relative of that individual, other than spouse, parent, son or daughter.

## FAMILY AND MEDICAL LEAVE AND PROVISIONS

Grand Forks County will grant an eligible employee up to a total of 12-work weeks of protected leave during any rolling 12-month period, measured backward from the date of any FMLA leave usage.

**To qualify as FMLA leave under this policy, the employee must be taking leave for one or more of the reasons:**

- **The birth of a child and to bond with the newborn child within one year of birth.**

An employee's entitlement to FMLA leave for birth and bonding expires 12 months after the date of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child. Birth and bonding leave must be taken as a continuous block of leave unless the department head and consultation with Human Resources agrees to allow intermittent leave, within 12 months of the birth.

- **The placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement.**

FMLA leave may be taken before the actual placement of a child if an absence from work is required for the adoption or foster care placement to proceed. FMLA leave to bond with a child after placement must be taken as a continuous block of leave unless the department head and consultation with Human Resources agrees to allow intermittent leave, within 12 months of the placement.

- **A serious health condition that makes the employee unable to perform the functions of their job, including incapacity due to pregnancy and for prenatal medical care.**

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee:

- is unable to work at all, or
- is unable to perform any one of the essential functions of the employee's position.

An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

- **To care for the employee's spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care.**

An employee must be needed to provide care for their spouse, son, daughter, or parent because of the family member's serious health condition in order for the employee to take FMLA leave.

## MILITARY FAMILY LEAVE AND PROVISIONS

### QUALIFYING EXIGENCY LEAVE

Grand Forks County will grant an eligible employee up to a total of 12-work weeks of protected leave during any rolling 12-month period, measured backward from the date of any FMLA leave usage for a "qualifying exigency" arising out of the foreign deployment of the employee's spouse, son, daughter, or parent. For the purpose of qualifying exigency leave, an employee's son or daughter on covered active duty refers to a child of any age.

**Qualifying exigencies can include:**

- Short notice deployment;
- Military events and related activities;
- Arrange alternative childcare and/or school;
- Care of the military member's parent;
- To make financial and legal arrangements;
- To attend counseling;

- To spend up to fifteen (15) calendar days with a military member who is on Rest and Recuperation leave during active duty;
- Certain post-deployment activities within 90 days of the end of the military member’s covered active duty; and
- Any other event that Grand Forks County and the employee agree is a qualifying exigency.

## **MILITARY CAREGIVER LEAVE**

Grand Forks County will grant an eligible employee up to a total of 26-work weeks of protected leave during a single 12-month period when leave is to care for a covered servicemember or veteran with a serious injury or illness. An eligible employee who is the spouse, child, parent, or next of kin of may request leave to care for an injured or ill servicemember or veteran.

### **A covered servicemember is either:**

- a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. (Note, the FMLA definitions of "serious injury or illness" for current service members and veterans are distinct from the FMLA definition of serious health condition).

When combined with other FMLA qualifying leave, may not exceed 26 weeks in the single 12-month period during which the 26 weeks of military caregiver leave is available. A single 12-month period for purposes of military caregiver leave begins on the first day that an employee takes military caregiver leave and ends twelve months after that date, regardless of the rolling 12-month period that Grand Forks County uses for determining available leave for other FMLA qualifying reasons.

## **FMLA LEAVE FOR SPOUSES WORKING FOR GRAND FORKS COUNTY**

**Eligible spouses employed by Grand Forks County may be limited to a combined total of 12 workweeks of family leave for the following reasons:**

- the birth of a son or daughter and bonding with the newborn child;
- the placement of a son or daughter with the employee for adoption or foster care, and bonding with the newly-placed child, and;
- the care of a parent with a serious health condition.

Eligible spouses who work for Grand Forks County may also be limited to a combined total of 26-work weeks in a single 12-month period to care of a covered servicemember with a serious injury or illness if each spouse is a parent, spouse, son or daughter, or next of kin of the servicemember. This limitation also applies to a combination of military caregiver leave and leave for the other qualifying reasons listed above.

These limitations do not apply to two employees working for Grand Forks County who are not legally married, even if they are living together or have a child(ren) together, or to siblings or other relatives who are working for Grand Forks County.

### **This limitation does not apply to leave:**

- For one’s own serious health condition, such as with the recovery period following the birth of a child;
- To care for a spouse, son, or daughter with a serious health condition; or
- For any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on “covered active duty.”

## REQUESTS FOR LEAVE

An employee must provide notice of their need for FMLA leave and provide the anticipated timing and duration of the continuous, intermittent, or reduced schedule. The initial request may be verbal; however, it is required to complete the Employee Leave Request form.

When the need for the leave is foreseeable, the employee is required to provide at least 30 calendar days advance notice of the need for leave, if practicable.

If a 30-calendar day notice is not foreseeable or it is unexpected, the employee must provide notice as soon as practical.

Requests not submitted according to policy and as soon as practicable may be delayed or denied based on individual facts and circumstances.

Employees must comply with Grand Forks County's department-specific call-in procedures when they miss work for reasons potentially covered by FMLA.

## CERTIFICATION OF LEAVE

### CERTIFICATION FOR THE EMPLOYEE'S AND FAMILY MEMBER'S SERIOUS HEALTH CONDITION

Grand Forks County will require certification for the employee's serious health condition or the family member's serious health condition. Human Resources will receive all medical certifications for employee's or family member's serious health condition(s). The employee must respond to the request for certification within 15 calendar days of the notice of eligibility. Failure to comply with requirements may result in delay or denial of leave or reinstatement from leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including termination.

If the employee or the employee's family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the County will accept a medical certification, as well as second and third opinions, from a health care provider who practices in that country. If a medical certification by a foreign health care provider is not in English, it is the employee's responsibility to provide a written translation of the certification.

### CERTIFICATION OF QUALIFYING EXIGENCY LEAVE

Grand Forks County will require certification of the qualifying exigency for military family leave sent to Human Resources. The employee must respond to such a request within 15 calendar days of the request. Failure to comply with requirements may result in delay or denial of leave or reinstatement from leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including termination.

### CERTIFICATION FOR MILITARY CAREGIVER LEAVE

Grand Forks County will require certification for the serious injury or illness of the covered servicemember. The certification must be submitted to Human Resources. The employee must respond to such a request within 15 calendar days of the request. Failure to comply with requirements may result in delay or denial of leave or reinstatement from leave, in which case the employee's leave of absence would be unauthorized, subjecting the employee to discipline up to and including termination.

### RE-CERTIFICATION

If, after the initial medical certification, the employee needs to renew or change the leave request, they are required to submit an additional or amended medical certification to Human Resources. Re-certification will be necessary when the employee seeks an extension of their leave. The employee must provide a new medical certification in each subsequent leave year. Depending on the circumstances, re-certification may be required every 30 days, or if the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, then whenever the minimum duration has passed.

**Re-certification may be requested even sooner than the periods identified above if:**

- The County obtains information that casts doubt on the continuing validity of the employee’s original certification;
- The employee requests an extension of their leave during leave that was supposed to last a specified length of time; or
- Circumstances described in the original certification have changed significantly.

Failure to provide proper medical re-certification may result in the denial of FMLA leave, or in a delay of its approval.

## **LEAVE DETERMINATION**

### **INCOMPLETE CERTIFICATIONS**

If an incomplete medical certification is received, Human Resources will provide the employee with the opportunity to have the health care provider correct the certification. The employee will have seven (7) calendar days to resolve any deficiencies in the medical certification. If, after seven (7) calendar days the identified deficiencies have not been resolved, the FMLA request may be denied.

### **SECOND AND THIRD OPINIONS**

If Grand Forks County receives a complete and sufficient certification but has a reason to doubt its validity, Grand Forks County may require the employee to obtain a second medical certification in accordance with the regulations under FMLA. Grand Forks County reserves the option to choose the health care provider to conduct the second opinion. If the second opinion differs from the original certification, the County may require the employee to obtain a third certification from a health care provider selected by both the employee and the County. The opinion of the third health care provider is considered final and must be used by the County. It is the responsibility of the County to pay for the second and third opinions, including any reasonable travel expenses for the employee or family member.

### **APPROVAL/DENIAL NOTICE**

Once Human Resources receives a completed medical certification the employee will be notified within five (5) business days whether or not the leave is approved or denied along with a designation of the leave as FMLA. If an employee uses accrued time off banks for a condition that progresses into a serious health condition, and the employee requests additional medical leave as provided under this policy, Grand Forks County may designate all or some portion of the leave taken as FMLA leave, to the extent that the earlier leave meets the necessary qualifications.

## **INTERMITTENT LEAVE OR REDUCED SCHEDULE LEAVE**

Eligible employees may take FMLA leave intermittently or by reducing their normal weekly or daily work schedule, when medically necessary for their own or an immediate family member’s serious health condition, qualifying exigency, or for the serious injury, or illness of a servicemember. Intermittent FMLA leave cannot be taken in increments smaller than a quarter hour for non-exempt employees and one-hour increments for exempt employees.

Absences under FMLA leave must be related to the serious health condition according to the medical certification. Using FMLA leave for reasons not related to the certification(s) is not permitted.

### **BIRTH OF CHILD/ADOPTION**

Intermittent FMLA leave is not permitted for the birth of a child or to care for a newborn child or newly adopted child when there is no serious medical condition. An employee may use a reduced work schedule within one year following the birth or adoption of a child, when approved by their department head and consultation with Human Resources.

## CALL-IN PROCEDURES

Employees must designate their absence as a FMLA leave covered event each time intermittent leave is used. Failure to comply with these procedures may subject the employee to discipline up to and including termination of employment.

## EXHAUSTION OF INTERMITTENT LEAVE

Once FMLA leave is exhausted or no longer needed, absences will be counted as occurrences in accordance to the Attendance Policy.

## JOB RESTORATION

An eligible employee who takes FMLA leave is entitled to return from leave and be restored to the position held prior to beginning FMLA leave or to a comparable position with equivalent benefits, pay, and other terms and conditions of employment. The comparable position must comprise the same or substantially similar duties and responsibilities and must entail equivalent skills, effort, responsibility and authority.

Exceptions to job restoration are permitted when the original assignment ended or the original position is eliminated during the FMLA leave due to a reduction in force, or if the employee would not otherwise have been employed even if the leave had not been taken.

### The reinstatement guarantees do not apply to employees:

- whose positions are so unique that the department cannot, after reasonable efforts, fill that position temporarily; or
- who have used the leave to pursue employment opportunities or to work for another employer.

Grand Forks County will notify the employee if their position will not be reinstated for either of the above reasons.

## WHILE ON LEAVE

### COMMUNICATION/STATUS REPORTS

While the employee is on FMLA leave, the employee may be asked to provide periodic status reports to Human Resources regarding their intention to return to work.

### PAY STATUS

Grand Forks County requires employees to use available paid leave, pursuant to the applicable leave policies, prior to using FMLA leave without pay.

Accrued time off banks will cease when the employee moves to an inactive pay status. Accrued time off banks will restart when the employee returns to an active pay status.

Paid leave time taken for any of the conditions will count toward the weeks of FMLA leave. The FMLA leave policy does not allow paid leave to be taken in excess of the limits provided in other applicable leave policies, including but not limited to the Sick Leave policy, Vacation Leave policy, or any other leave provided by Grand Forks County.

## EMPLOYEE BENEFITS

**Health Insurance:** During an employee's FMLA leave, the County will maintain health insurance and other group health benefits on the same conditions as if the employee was working.

If the employee wishes for their benefits to continue during their leave, they must continue to pay their share of the premiums for those benefits at the same contribution rate as if they were an active employee. If any portion of FMLA

Leave is compensated by the use of accrued paid time (sick, vacation, personal holidays, etc.), the employee's share of the benefit premiums will be paid through automatic payroll deductions. For unpaid FMLA leave, the employee is required and must make payments for their share of the premiums on a monthly basis. The County's obligations to maintain health benefits may cease if an employee fails to pay their share of premiums. All payment must be submitted to the Payroll Office in accordance with the terms and conditions indicated within this policy.

If an employee elects not to continue health insurance during a period of FMLA leave, the coverage may be reinstated upon return from leave. When the employee returns to work, they should contact the Payroll Office immediately to ensure coverage is reinstated.

If an employee notifies Grand Forks County they will not be returning from a period of FMLA leave, the County will terminate the employee's group coverage in accordance with the plans' details and offer continuation of health insurance benefits only in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the provisions of the health insurance plans. If the employee fails to return to work following the FMLA leave for reasons other than circumstances that are beyond the employee's control, including a FMLA-qualifying medical condition, Grand Forks County will require the employee to repay the employer's share of the medical premium.

**Holidays during FMLA Leave:** Employees will not be paid for holidays that fall during Family and Medical Leave unless the holiday falls on a day covered by accruals (i.e., vacation leave, sick leave or a personal holiday).

**Retirement Plans:** When an employee is on a FMLA leave without pay, NDPERS contributions made by Grand Forks County will cease until such time as the employee returns to work. This break in contributions will affect the number of months worked at retirement.

## RETURNING FROM FMLA

Employees are expected to be able to return to work by the end of their approved leave. Grand Forks County will require a Return-to-Work Certification prior to returning to work for all employees taking leave for their own serious health condition from their health care provider confirming the release to return to work to perform their regular duties or set forth any restrictions. The Return-to-Work Certification should be completed and submitted to Human Resources at least two (2) days in advance of the expected date of return.

If an employee is released to return to work with restrictions, the department manager in consultation with Human Resources will consider whether the restriction can be met in the workplace or if a reasonable accommodation is required. Medical restrictions are those that prevent the employee from performing their essential functions at the end of the approved leave due to a continuing medical condition.

## UNABLE TO RETURN AFTER FMLA LEAVE

If an employee is not medically released to return at the end of their FMLA leave and the employee has not been granted additional leave, employment voluntary ends, effective the last day of the approved leave, unless a continuation of leave has been granted as an accommodation under the Americans with Disability Act as amended, or for other reasons.

## FAILURE TO RETURN AFTER FMLA LEAVE

Any employee who fails to return to work as scheduled after FMLA leave (end of certification, release to return to work, or exhaustion of leave entitlement) or contact Grand Forks County regarding their status following the conclusion of FMLA leave will be considered to have voluntarily resigned their employment.

## CONFIDENTIALITY

Grand Forks County will keep confidential all information relating to requests for FMLA leave. This information will be used only to make decisions in regard to the provisions of this policy. Supervisors will submit all medical information to Human Resources and should not retain any copies in their employee file.



## COORDINATION WITH OTHER POLICIES

### ATTENDANCE AND FMLA

Absences protected by FMLA leave will not be counted as occurrences of absenteeism under Grand Forks County's attendance policy. However, employees may be subject to discipline up to and including termination of employment if, during their leave, they engage in activities inconsistent with the stated purpose for the leave.

### WORKERS' COMPENSATION AND FMLA

FMLA and Workers' Compensation run concurrently if the injury meets the definition of a serious health condition under FMLA. FMLA requests for work injuries involving Workers' Compensation may follow a different process with respect to the verification and clarification of the medical certification.

## ROLES

Human Resources is responsible to obtain all FMLA records and will only share information with the employee's supervisor that pertain to duration of leave and applicable work restrictions.

Department Heads or designee are responsible for ensuring that FMLA leave is used in accordance with this policy.

Employees are responsible for requesting and reporting their need for FMLA leave.

Payroll will record the use of compensated time through the County's Payroll system.

*This policy is intended as a guideline to assist in the consistent application of Grand Forks County policies and procedures for employees. The policy does not create a contract implied or expressed, with any Grand Forks County employees. Grand Forks County reserves the right to modify this policy in whole or in part, at any time, in its sole discretion. This policy will be reviewed no less than every three years, unless required by Federal, State, or Local law.*

## RESOURCES

Contact the Human Resources if you have any questions or if you would like additional information about this policy.

**The following resources from the US Department of Labor provides additional information regarding FMLA:**

FMLA Employee Guide: <https://www.dol.gov/whd/fmla/employeeguide.pdf>

FMLA Employee Guide to Military Family Leave: [https://www.dol.gov/whd/fmla/2013rule/FMLA\\_Military\\_Guide\\_ENGLISH.pdf](https://www.dol.gov/whd/fmla/2013rule/FMLA_Military_Guide_ENGLISH.pdf)

FMLA Employee Rights and Responsibilities: <https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

FMLA Fact Sheet: [https://www.dol.gov/whd/fmla/fact\\_sheets.htm](https://www.dol.gov/whd/fmla/fact_sheets.htm)

## FORMS AND ADDITIONAL RESOURCES/INFORMATION

FMLA Employee Leave Request Form

FMLA Employee Checklist

FMLA Department Checklist

FMLA Benefits Coverage Statement for Continuous FMLA Leave

FMLA FAQ

## RELATED POLICIES AND PROCEDURES

Vacation Leave Policy

Sick Leave Policy

Leave Without Pay Policy

Attendance Policy

Holiday Pay

Employee Assistance Program